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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 158

KENNETH P. STECKENRIDER,

Petitioner,

vs.

STATE OF MICHIGAN,

Respondent.

RESPONSE TO PETITION FOR CERTIORARI

I.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this court under 28 USCA, Sec. 1257(3). He asks certiorari to vacate a verdict of conviction, claiming under the Sixth Amendment the right to be informed of the nature and cause of the accusation against him. He does not challenge the provision of the Michigan code of criminal procedure which permits amendments to a criminal information. 3 CL 1948, Sec. 767.76.[1]

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[1] Printed in Appendix.

II.

STATEMENT OF THE CASE

Essentially the statements, at pages 2, 3 and 4 of the petition for certiorari, are accurate. We must add, however, that the two 17-year old boys who testified for the prosecution established that the petitioner paid them some $2,100.00 for a large quantity of stolen nickel anodes; they told the petitioner of the theft, and he furnished a rented truck in which the stolen metal was transported to his possession. No testimony was offered by the defense.

One of the boys fixed the date of the theft as January 4, 1957, while the other testified that it occurred on January 14, 1957.

REASONS WHY WRIT SHOULD NOT ISSUE

A.

At the trial, defense counsel objected to amendment of the date in the videlicet and to the insertion of a second name to identify the owners of the stolen property, for whose purchase and concealment the petitioner was convicted. However, petitioner's counsel made no request for a continuance to permit an opportunity to meet or counter the proofs, nor did he attempt to have stricken the testimony which did not precisely adhere to the date and owner

stated in the information. As indicated, the defense offered no testimony whatsoever.[2]

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[2]

Mich. Comp. Laws 1948 §767.76 (Henderson); Mich. Stat. Ann. (Rev) §28.1016 permits the amendment of an indictment:

"No indictment shall be quashed, set aside or dismissed or motion to quash be sustained or any motion for delay of sentence for the purpose of review be granted, nor shall any conviction be set aside or reversed on account of any defect in form or substance of the indictment, unless the objection to such indictment, specifically stating the defect claimed, be made prior to the commencement of the trial or at such time thereafter as the court shall in its discretion permit. The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury. In case a jury shall be discharged from further consideration of a case under this section, the accused shall not be deemed to have been in jeopardy. No action of the court in refusing a continuance or postponement under this section shall be reviewable except after motion to and refusal by the trial court to grant a new trial therefor and no writ of error or other appeal based upon such action of the court shall be sustained, nor reversal had, unless from consideration of the whole proceedings, the reviewing court shall find that the accused was prejudiced in his defense or that a failure of justice resulted."

B.

Amendment on the information had no purpose beyond conforming the pleading to the proofs. The Supreme Court of Michigan has consistently upheld the principle that an information may be amended to conform with the trial proofs, provided the defendant is not accused of a new and different crime. *People vs. Jones*, 308 Mich. 43. At pp. 45-47, the court said:

> "The time when the illegal operation was performed is not an essential element of the offense, except to the extent of showing that Mrs. Holstein was pregnant at the time the illegal operation was performed. The time of the offense was alleged under a videlicet in the information and it was sufficient to establish that the offense occurred on the 14th.
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> • • •
>
> "'A *videlicet* avers a date tentatively, and unless a particular day or date is essential to a crime there is no variance if the evidence shows that the very crime charged was actually committed on a different date.'"

People vs. Vanderjagt, 235 Mich. 620, pp. 621-622:

> "This court has frequently held that it was competent to amend the date in an information where, as in this case, time was not of the essence of the offense."

Permitting the amendment to include the name "Northeast Plating Company, a Michigan Corporation" served merely to identify the owner of the stolen property. Deprivation of basic rights does not appear on any remotely plausible basis.

Clearly, a new offense may not be substituted by amendment. Substitution was not attempted here. The substantial requisites of the crime alleged were presented in the information. Therein petitioner was informed that he stood accused of knowingly buying and receiving stolen nickel anodes of the value of $500.00, on or about January 7th, 1957. The actual owner of the goods was of no material significance, so long as in fact they had been stolen. Thieves may refuse to disclose their source to a receiver; they may not even recall or know from whom the property was stolen. It cannot be gainsaid that they care little concerning these details.

The ingredients of the offense of which petitioner was convicted are:

1. The property was stolen, and

2. The accused had knowledge of the theft when the purchase was made.

The date of the theft and the ownership of the stolen property are not indispensable components.

Had petitioner offered a defense of alibi, the date might have been of considerable significance. He neither offered proof of alibi nor notice of the defense as required by statute.[3] He offered no testimony or proofs whatsoever. There was no showing or representation that the defense was adversely affected either by the change in the date to conform to the testimony or by the addition of the name of an additional victim of the theft.

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[3]

3 Compiled Laws 1948, Sec. 768.20.

C.

The Sixth Amendment, whose refuge is sought by petitioner, is not applicable here, because it does not apply to the states. See *Feldeman vs. U.S.*, 322 US 487.

CONCLUSION

It is therefore urged that the petition for writ of certiorari be denied.

Respectfully submitted,

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Samuel H. Olsen,
Prosecuting Attorney of Wayne County

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For Respondent

APPENDIX

Sec. 767.67 Compiled Laws of 1948. *Indictment; charging accessory without principal.*

Sec. 67. Any number of accessories after the fact, or receivers, buyers, or persons aiding in the concealment of any stolen money, goods, or property may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amendable to justice.

HISTORY: CL 1929, 17281. This section re-enacts Sec. 5 of Act 77 of 1855, being CL 1857, 6051; CL 1871, 7920; How. 9531; CL 1897, 11916; CL 1915, 15743.